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FRAUDULENT CONVEYANCES—LOAN BY WIFE TO HUSBAND.—A wife had loaned her husband money without any written evidence or definite promise of repaying it. She had not demanded payment within ten years, but the husband had promised to protect her if he got into financial difficulties. The husband was sued in tort for damages and three days after the suit was begun and known to the wife he conveyed to her land in payment of the claimed loan. The judgment creditor brings an action to have the conveyance set aside. *Held*, that the conveyance was in fraud of creditors. *Balz v. Nelson*, — Mo. — (1803), 72 S. W. Rep. 527.

Where a wife gives her husband unlimited control over her property and permits him to invest it in his own business for a series of years, she will not be permitted when he is in failing circumstances to withdraw it from the just claims of creditors, who in good faith gave the husband credit, relying on his apparent ownership and the facts being known to the wife. *Riley v. Vaughan*, 116 Mo. 169, 22 S. W. 707, 38 Am. St. Rep. 586. A debtor in failing circumstances may convey his property to his creditors, though it operates to hinder and delay other creditors, and it makes no difference that it was done with an intent on the part of the debtor that it should so operate and the creditor so receiving it was aware of the intent, provided he received it with an honest purpose of securing his debt. But if he acted from a desire to aid the debtor in defeating his other creditors, or in covering up his property, or in giving him a secret interest therein, or in any way locking it up for the debtor's own use and benefit, the conveyance will be considered fraudulent and held voidable: *Holmes v. Braidwood*, 82 Mo. 610; *Shelley v. Boothe*, 73 Mo. 74, 39 Am. Rep. 481; *Brown v. Foree*, 7 B. Mon. 357, 46 Am. Dec. 519; *Anderson v. Warner*, 5 Ill. App. 416; *Ross v. Sedgwick*, 69 Cal. 247, 10 Pac. 400; *Knower v. Central National Bank*, 124 N. Y. 552, 27 N. E. 247, 21 Am. St. Rep. 700.

GARNISHMENT—ROLLING STOCK—RIGHTS OF GARNISHEE.—Plaintiff's cattle were killed while being carried over defendant's railroad. A freight car belonging to defendant was in possession of N. & W. Railway Co. The usual traffic arrangements as to use of cars existed between the two companies. Plaintiff levied an attachment on the car and also served garnishment on N. & W. Ry. Co. Garnishment was served while the car was at its destination on a side track, in the process of being unloaded of sacks of patent plaster. Defendant company, a foreign corporation, did not appear in the suit, but N. & W. Ry. Co. filed answer. *Held*, that a railroad company is not liable to garnishment for cars received of a connecting line under the usual running arrangements existing between them. *Wall v. N. & W. R. Co. et. al.* (1903), — W. Va. —, 44 S. E. Rep. 294.

The court came to the conclusion that the rolling stock of either a foreign or domestic corporation is liable to execution and attachment. The recognized rule is that such property as is not essential to the exercise of the corporate franchise is subject to execution. See *B., C. & M. R. Co. v. Gilmore*, 37 N. H. 410; *Coe v. C., P. & D. R. Co.*, 10 Oh. St. 372. In this case, provisions in the state constitution govern the court in their conclusion. Apart from statutory provision, conflict of authority arises in the application of the rule, in deciding whether rolling stock is in the particular instance thus essential. The reasoning of the court as to the non-liability as garnishee is that not only did the N. & W. Ry. Co. not owe defendant anything, but by contract had the right to use the car regardless of the levy upon it. That the plaintiff cannot put the garnishee in a worse position than if the defendant had himself enforced his claim against him, is a fundamental principle of garnishment. Inasmuch as the present garnishee was to pay wheelage to the

defendant for use of the car, the application of the principle to this case is interesting. The court have made a new application of an old principle, and follow the conclusions of the only previous case exactly in point. *M. C. R. Co. v. C., & M. R. Co.*, 1 Ill., App. 399.

GUARDIAN AND WARD—TESTAMENTARY GUARDIAN.—A striking application of the well settled principle that no person is authorized to appoint a testamentary guardian to any but his own children, is found in a recent Georgia case. A husband, after the death of his wife, released by written agreement to his parents-at-law, all his parental power, custody and control over his minor son, then less than two years old. The grandparents turned the care of the child over to his maternal aunt, who was plaintiff in *habeas corpus* to gain control of the child. The grandfather, the survivor of the grandparents, by his last will and testament, appointed his son, uncle of the child, "Guardian in his stead." *Held*, that the appointment of the uncle as testamentary guardian was a nullity, and that while a father has the right to part with the legal control of his children, the one to whom such control is granted cannot perpetuate the alienation of child and parent by the appointment of a testamentary guardian. *Lamar et. al. v. Harris* (1903), — Ga. — 44 S. E. Rep. 866.

See WOERNER'S AMERICAN LAW OF GUARDIANSHIP, Art. 20, page 61; SCHOULER'S DOMESTIC RELATIONS, Art. 287, page 429; SHELFORD'S MARRIAGE AND DIVORCE, page 691; *Villareal v. Mellish*, 2 Swanst. 533; *Hoyt et al. v. Hilton et al.*, 2 Edws. Ch. 202; *Williamson v. Jordon*, Busb. Eq. 46; *Taylor v. Jeter*, 33 Ga. 195.

INSURANCE—PLEADING—WAIVER—FAILURE OF NOTICE AND PROOF—GENERAL AND SPECIFIC DENIAL OF CODE—EXTERNAL, VIOLENT, AND ACCIDENTAL INJURIES.—A policy insured "against bodily injuries sustained through external, violent, or accidental injuries," but provided that it should not cover injuries "resulting from anything accidentally or otherwise taken, administered, absorbed or inhaled." It provided that "immediate written notice of accident must be given," and that "affirmative proof of loss must be furnished as soon as the nature and extent of the same can be determined, and any legal proceeding for recovery must be commenced in six months in cases of death." This action was brought three years and a half after the death of the insured. The petition alleged that the insured died from an over dose of morphine, administered by a physician for the purpose of allaying pain, and that immediate written notice was given to the defendant.

The defendant filed an amended answer admitting the issuance of the policy and death of the insured, but denying all the other allegations of the petition "not hereinafter specifically admitted." The amended answer also averred that the insured "did not die of any bodily injury sustained through any external, violent, or accidental means," and that no written notice of accident or proof of loss or death was ever furnished to the defendant. The jury found that no notice or proof of death was given to the defendant till the filing of this suit.

Held, (1.) That defendant did not by denying liability waive the defense based on neglect to give notice of accident and proof of loss.

(2.) That an answer denying "each and every other allegation of the petition not specifically admitted" is neither the general nor special denial called for by the statute.

(3.) That since no forfeiture is expressly provided for by the policy the failure to give notice and proof furnishes no defense.